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NEW DELHI, SATURDAY, JANUARY 20, 2001/PAUSA 30, 1922

इस भाग में सिंग पृष्ठ संख्या दी जाना है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)  
PART II—Section 3—Sub-section (III)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग  
नई दिल्ली, 29 दिसम्बर, 2000

28-9-2000 in Election Petition bearing diary No.  
27164 of 1999.

आ.अ. 13.—निर्वाचन आयोग एनवूद्वारा 1999 की  
डायरी सं. 27164 वाली निर्वाचन अर्जी में तारीख  
28-9-2000 के मद्रास उच्च न्यायालय के निर्णय की लोक  
प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा  
106/111 के अनुसरण में प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)  
[सं. 82/ता.ना.-लो.स./27164/99]

आदेश में,  
बाबू राम, सचिव

ELECTION COMMISSION OF INDIA  
New Delhi, the 29th December, 2000

O.N. 13.—In pursuance of Section 106/111 of  
the Representation of the People Act, 1951 (43 of  
1951), the Election Commission hereby publishes  
the judgement of the High Court of Madras dated

IN THE HIGH COURT OF JUDICATURE  
AT MADRAS  
(ORIGINAL JURISDICTION)

Thursday, the twenty eighth day of September, 2000

CORAM :

THE HON'BLE MRS. JUSTICE A.  
SUBBULAKSHMY

Election Petition Diary No. 27164 of 1999  
T. Maruthamuthu ... Petitioner

Vs.

1. Returning Officer|District Collector,  
Tiruchirappalli Parliamentary,  
Constituency, Tiruchirappalli.
2. P. Rengarajan Kumaramangalam  
(deceased)

3. L. Adikalraj
4. M. Rajasekaran
5. K. Muthusamy
6. A. K. Pitchai
7. S. Kannan
8. A. Nagendran
9. S. Alagiya Manavalan
10. K. Anbazhagan
11. M. Anthonyraj
12. C. Anbazhagan
13. G. Sakthivel
14. A. Hussain Khan
15. M. Soundarapandian
16. A. Joseph Frances
17. R. Sakthivel ... Respondents

Election Petition under Section 80, 81 and 123 of the Representation of People Act 1951, praying for an order to declare that the Election of the Returned Candidate, the second respondent herein as void and to set aside the said Election.

This Election Petition bearing Diary No. 27164 of 1999 coming on for orders before this Court on this day in the presence of Mr. V. Sitharanjandas, Advocate for the Petitioner, the Court, made the following order :—

The Counsel for the petitioner submits that the second respondent is dead and the petition has become infructuous.

2. In view of the above submission, the petition is dismissed as infructuous.

Witness, the Hon'ble Thiru Justice Nagendra Kumar Jain, Chief Justice at Madras aforesaid, this the 10th day of November, 2000.

K. KARUPPIAH, Assistant Registrar

Original Side-II

[No. 82/TN-HP/27164/99]

By order,

BABU RAM, Secy.

आदेश

नई दिल्ली, 5 जनवरी, 2001

आ.अ. 14.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग 1999 की निर्वाचन अर्जी सं. 4 में चण्डीगढ़ स्थित पंजाब और हरियाणा उच्च न्यायलय के तारीख 20 अक्टूबर, 2000 के निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/पंजाब-लो. स./4/99]

आदेश से,

के.आर. प्रसाद, सचिव

## ORDER

New Delhi, the 5th January, 2001

O.N. 14.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes judgement dated 20th October, 2000 of the High Court of Punjab and Haryana at Chandigarh in Election Petition No. 4 of 1999.

IN THE HIGH COURT OF PUNJAB AND

HARYANA AT CHANDIGARH

CIVIL ORIGINAL SIDE

Election Petition No. 4 of 1999

Mrs. Sukhbans Kaur wife of  
Shri Pritam Singh Bhinder,  
resident of Mohalla Onkar Nagar,  
Gurdaspur. ... Petitioner

Versus

Shri Vinod Khanna,  
Member of Parliament,  
Resident of 17, Balwant Rai Mehta Lane,  
New Delhi. ... Respondent

Election Petition under Section 80, 80 A. 81 and 82 of the Representation of Peoples Act, 1951 read with Section 100 of the Representation of Peoples Act, 1951, praying that the Hon'ble High Court may be pleased to allow the present election petition and declare the election of returned candidate void with costs.

Dated the 20th October, 2000

PRESENT :

The Hon'ble Mr. Justice A. S. Garg.

For the Petitioner : Shri M. L. Saggar, Advocate

For the Respondent : Mr. S. P. Jain, Sr. Advocate with

Mr. Dheeraj Bali, Advocate

## JUDGEMENT

A. S. GARG, J.—Mrs. Sukhbans Kaur, a defeated candidate has challenged the election of Shri Vinod Khanna, otherwise a film Actor, a

successful candidates declared as Member Parliament from Gurdaspur-I, Parliamentary constituency of Punjab. The latter won the election by a margin of only 1399 votes.

The important dates of the election programme for the said constituency, which are material, may be enumerated as such :—

1. Calling of polls in constituency	11-7-1999
2. Last date for filing nomination	18-8-1999
3. Scrutiny of nomination	19-8-1999
*4. Last date for withdrawal of candidatures	21-8-1999
5. Date of polling	5-9-1999
6. Hours of Poll	7 A.M. to 6 P.M.
7. Counting of votes	6-10-1999
8. Date before which the Election shall be completed.	10-10-1999
9. Declaration of result	7-10-1999

The petitioner filed for nomination papers on 16-8-1999 and respondent, a returned candidate, Shri Vinod Khanna, filed the nomination papers on 18-8-1999 for contesting the election in the said Parliamentary Constituency. The petitioner was a nominee of the Indian National Congress Party while respondent was a candidate of Bhartiya Jant Party (BJP) supported by Shiromani Akali Dal. Ultimately five candidates remained in the field. The petitioner and the respondent were the main candidates. The respondent secured 3,15,267 votes while the petitioner secured 3,13,868 votes.

It was being claimed that Model Code of Conduct was declared which came into force with effect from 12-7-1999 with the instructions that nobody was allowed to misuse the State machinery, i.e. Rest House, transfer of the State officials officers and to strictly follow the ethics and legal constraints.

Coming to the alleged facts straightaway that an amount of Rs. 2 Crores was placed at the disposal of the Members of the Parliament for being spent for the developmental work in the area of one's constituency. It was further alleged that the respondent ceased to be a Member Parliament after the previous Parliament was dissolved and, therefore, the respondent got released a sum of rupees one Crore which was got credited in the name of Additional Deputy Commissioner (Development) Gurdaspur on 26-5-1999. On 26-4-1999,

the Parliament was dissolved. So, according to the allegations, the respondent got released the aforesaid amount through Shri S. S. Kemwal, the then Deputy Secretary, Union of India and committed a corrupt practice covered under Section 123(7) of the Representation of People Act, 1951 (hereinafter referred to as the Act).

Thereafter the respondent allegedly got the assistance of Shri S. K. Sandhu, IAS, then Deputy Commissioner (District Collector), Gurdaspur, who was also the Returning Officer of Gurdaspur-I, Parliamentary Constituency; that of Shri Som Nath Hoshiarpuri, IAS, Additional Deputy Commissioner (Development) for utilising the MPLADS fund. It was also alleged that the respondent got administrative approval for various matters from Shri S.K. Sandhu, IAS, Deputy Commissioner, Gurdaspur in the dates prior to 26-4-1999 by manipulating and ante-dating the official record and this was all done to assist the respondent, Shri Vinod Khanna, in the said election. The aforesaid officers issued series of cheques in this connection bearing Nos. 179001 to 179100, 686201 to 686300 and 274198. These cheques were issued on 30-11-1998, 16-4-1999, 26-5-1999 and 27-5-1999.

It was further alleged that the administrative approval for developmental projects for various villages in the constituency were also obtained on previous dates and, therefore, the respondent was guilty of corrupt practices.

Besides the aforesaid alleged mal-practice, on 22-8-1999 the respondent addressed a public meeting in village Malikpur and proclaimed in the meeting that the cheques had been issued to various Sarpanches, who had already assured their votes to be polled in this favour and to win over the electorate. Shri Raj Kumar, Sarpanch of village Bhoa, Tehsil Pathankot, Shri Baldev Singh resident of Shehr Channa, P.O. Ferozepur Kalan, District Gurdaspur, Smt. Kanta, Sarpanch of village Shehr, secured the presence of voters in their respective villages and were promised that they will get the cheques issued. It was further claimed that Shri Raj Kumar, Sarpanch of village Bhoa, expressed his inability to support the respondent and the cheque was not issued to him. The cheques were issued to Shri Sat Pal Saini, BJP, M.L.A. and Smt. Kanta, Sarpanch, at 2.00 P.M. on 23-8-1999. Shri Prem Kumar, Block Development and Panchayats Officer, asked MLA Shri Satpal Saini to issue a cheque to Smt. Kanta and cheque No. 797058 dated 23-8-1999 was issued to her which was presented on 24-8-1999 in the account of the Grain Panchayat, Shehr Channa.

The other cheques were encashed after 11-7-1999, the details of which are given hereunder :—

Sr. No.	Date of encashment	Cheque No.	Amount Rs.
1.	13-7-99	179074	37,500
2.	13-7-99	686206	37,500
3.	13-7-99	686232	1,50,000
4.	14-7-99	686215	37,500
5.	14-7-99	179069	37,500
6.	14-7-99	686212	38,500
7.	15-7-99	179070	3,00,000
8.	15-7-99	686251	1,25,000
9.	20-7-99	179044	75,000
10.	20-7-99	179061	18,750
11.	22-7-99	686240	37,500
12.	23-7-99	179080	37,500
13.	23-7-99	686203	37,500
14.	23-7-99	686209	37,500
15.	24-7-99	686244	37,500
16.	27-7-99	686201	37,500
17.	29-7-99	686237	37,500
18.	30-7-99	179043	75,000
19.	2-8-99	179041	75,000
20.	3-8-99	179070	3,00,000
21.	3-8-99	686205	37,500
22.	4-8-99	179063	18,750
23.	10-8-99	179059	37,500
24.	31-8-99	274918	1,00,000
25.	14-9-99	179049	56,250

All these cheques were stated to have been signed on previous dates as the election schedule was announced on 11-7-1999.

On 15th, 16th, 17th and 18th July, 1999, cheques bearing Nos. 6578800 to 829 and 969499 were distributed in different villages in Sujampur Assembly segment of Gurdaspur-I Parliamentary Constituency worth Rs. 40,000, Rs. 50,000, Rs. 90,000. These cheques were credited in the State Bank of India, Madhopur on 25-8-1999. The help of Shri Prem Kumar, Block Development and Panchayats Officer was obtained in this behalf. This information was provided by Shri Jarnail Singh, Ex-Sarpanch. The following cheques were deposited in the bank on 13-8-1999, the details of which are given below :—

Sr. No.	Date of deposit of cheques	Amount (Rs.)
1.	13-8-99	50,000
2.	-do-	1,00,000
3.	-do-	50,000
4.	-do-	60,000
5.	-do-	50,000
6.	-do-	70,000
7.	-do-	40,000
8.	-do-	50,000
9.	-do-	40,000
10.	-do-	50,000
11.	-do-	50,000
12.	-do-	50,000

The aforesaid cheques were allegedly issued by Shri Prabh Dayal, Block Development and Panchayats Officer. The cheques bearing No. 797001 to 797100 were also issued by Shri Prabh Dayal and these cheques were credited on 28-7-1999.

Shri Vinod Khanna, respondent, allegedly convened a meeting in the Gurdwara of village Ballagan on 23-8-1999 and addressed the meeting with VAHE GURU JI KA KHALSA VAHE GURU JI KI FATEH and requested them to vote for him and appealed to the voters in the Gurdwara that Congress (I) was always against the Sikh people and Sikh religion and this act of the respondent came in the Indian Express on 26-8-1999 and a complaint was made to the Chief Election Commissioner.

On 24-8-1999, the respondent went on tour of Gurdaspur District Courts and promised the members of the Bar that he was going to donate a sum of Rs. 1.50 lac for construction of Bar room and library and cheque No. 686226 dated 26-5-1999 was issued. The cheque was issued in the name of Sub-Divisional Magistrate, Gurdaspur. It was also claimed that the respondent misused a sum of Rs. 56,06,250 from 26-5-1999 to 20-7-1999 and Rs. 16,68,750 i.e. before and after the announcement of poll schedule on 11-7-1999.

It was also claimed that the respondent, the returned candidate, obtained the assistance of Shri Gurdarshan Singh, Executive Officer, Municipal Council, Dinanagar by using his official residence as his election office. A written complaint dated 26-8-1999 was made by Shri Neeraj Salhotra, to the Chief Election Commissioner, New Delhi, and the Returning Officer Pradeep Kumar Sabbarwal, Sub Divisional Magistrate, Gurdaspur, was asked to take necessary action. He visited the official residence of Shri Gurdarshan Singh, Executive Officer and Smt. Roop Rani, BJP, MLA was present at the said premises along with Shri Parveen Kumar and Ashok Kumar and the party flags were hoisted on the building. The official residence of Shri Gurdarshan Singh, Executive Officer was sealed by the Sub Divisional Magistrate, Gurdaspur. In this way according to the petitioner, the respondent procured the assistance of the Government officials. The official telephone No. 41412 was also being misused. A resolution was also passed by the Municipal Council, Dinanagar, condemning the use of official residence for election purposes.

It was stated that respondent took the help of a large number of persons by bargaining with voters, the names of whom are mentioned in paragraph 15 of the Election Petition.

The respondent allegedly appointed Shri Surinder Singh son of Kartar Singh, M.L.A. as polling agent, who was a clerk in State Government Sugar Mill, Panjar and also appointed polling agent Shri Gurmeet Singh, who was a Chageman, at Thein Dam.

The petitioner placed on record document Annexure P-1, the guidelines on Member Parliament Local Area Development Scheme (MPLADS). Appendix I is the list of works which could be undertaken under the said scheme. Appendix II is the list of permissible work which could be done. Annexure P-2 is the document dated 26-8-1999 indicating that a complaint was made for misuse of the residence of Executive Officer, Municipal Council, Dinanagar. Annexure P-3 is the complaint dated 22-7-1999 with regard to issuance of cheques. Annexure P-4 is complaint dated 26-8-1999 for misuse of Gurdwara. Annexure P-5 is a complaint regarding the conduct of the respondent that he was wearing different types of dresses and was acting and meeting the other politicians and distributing scotch whisky and Tandoori chicken and proclaimed that he was going to model Gurdaspur on Washington and Pathankot on a New Jersey city patron and claimed that he was for some time with 'Rajneesh'. There is a list of documents attached with regard to the documents relied upon relating to the aforesaid cheques.

On the basis of the aforesaid, it was being asserted that the respondent has been guilty of serious mal-practices and has violated Code of Conduct and because of misuse of the State machinery and taking assistance from the high officers came to be elected and therefore the election

as such was invalid, unconstitutional and void and was liable to be set aside.

The respondent has filed a detailed written statement and has denied and controverted each and every allegation mentioned in the petition and has claimed that the petition was bad for the fact that it did not disclose the necessary material facts and circumstances, necessary ingredients relating to the questions of alleged misuse of official machinery and issuance of ante-dated cheques and by keeping concealed the material facts and not mentioning the facts required to be mentioned in the election petition and that the election petition is liable to be dismissed. It was also asserted in the written statement that the allegations in the Election Petition should be mentioned as mentioned in a criminal trial. There should be specific allegations regarding the time, the date, place where the alleged corrupt practices of ante-dated cheques or other mal-practices were conducted and the election petition could not be decided on the basis of uncertain and vague allegations. The petitioner was required to mention the place and the persons who ante-dated and signed the cheques. The precise assistance that was obtained from the aforesaid officers of the district was also required to be mentioned and in what manner the assistance was obtained and who benefited from it and in what manner should also have been mentioned in the petition so as to allow the other side to controvert the same.

It was also mentioned that the respondent filed his nomination papers on 18th August, 1999 and the election took place on 5-9-1999. According to the written statement, the allegations against the respondent, the returned candidate, should relate to the period between filing of nomination papers and the date of polling. It was stressed in the written statement that the respondent became a candidate on 18-8-1999 when he had presented his nomination papers before the Returning Officer and, therefore, the alleged corrupt practices and conduct alleged in the election petition related to the period earlier to 18-8-1999.

The incidents relating to the help sought from Smt. Kanta Rani, Shri Sat Pal Saini, BJP, MLA and other allegations made regarding the misuse of the premises were also stoutly denied and controverted. It was also claimed that the petitioner has mentioned the names of their own supporters in the election petition to misrepresent the conduct of the respondent and they are the witnesses of the petitioner herself. It was also denied that religious sentiments of any community were hurt. The main stress in the written statement was on the non-disclosure of material facts relating to the allegations of corrupt practices and that the issuance of cheques related to the period prior to the filing of the nomination papers.

Therefore, it was ultimately prayed that the petition deserves to be dismissed on preliminary grounds though the petition was being contested on merits as well.

In replication the allegations made in the petition were reiterated and the contentions raised in the written statement were denied.

The following issues were cast to determine the controversy between the parties :—

- (1) Whether the respondent obtained and procured the assistance of Gazetted Officer in the UOT and is guilty of committing corrupt practices as alleged in para 7 of the petition ? O.P.P.
- (2) Whether the respondent obtained and procured the assistance of Gazetted Officer in the State of Punjab and is guilty of committing corrupt practices as alleged in paras 8, 9, 10, 11, 12, 13, 14, 17 and 19 of the Petition? OPP
- (3) Whether respondent obtained and procured the assistance of Government servants in the State and is guilty of committing corrupt practices as alleged in para 16 of the petition? OPP
- (4) Whether the respondent is guilty of committing corrupt practices of bribery as alleged in paras 15 and 19 of the petition? OPP

(5) Whether the respondent is guilty of committing corrupt practices of appealing in the name of religion as alleged in para 18 of the petition?

(6) Whether the petition discloses no cause of action and the averments made in various paragraphs do not fall under any provision of the RP Act, 1951? If yes, its effect? OPR

(7) Whether the allegations of corrupt practice prior to the filing of the nomination papers by the respondents cannot be questioned in an election petition? If yes, whether those allegations are liable to be struck off? OPR

(8) Whether the Election Petition lacks in material facts and particulars and is cryptic, vague and uncertain and is liable to be dismissed? OPR

(9) Whether the affidavit attached with the petition is not proper, if so its effect? OPR

(10) Whether the verification of the petition is not according to law, if so its effect? OPR

(11) Relief.

It is the conceded position from the contentions in the petition itself that the aforesaid cheques have been issued on 16-4-1999 i.e. even ten days before the Parliament was dissolved. Another set of cheques was issued on 26-5-1999, then on 27-5-1999 and then from 15 to 18-7-1999 and the amount of the said cheques was deposited in the Central Cooperative Bank on 13-8-1999. Bargaining with the voters is mentioned in para No. 15 with no details. The cheques were allegedly encashed on 13-7-1999, 14-7-1999, 15-7-1999, 20-7-1999, 22-7-1999, 23-7-1999, 24-7-1999, 27-7-1999, 29-7-1999, 30-7-1999, 2-8-1999, 3-8-1999, 4-8-1999, 10-8-1999, 31-8-1999 and 14-9-1999.

Shri M. I. Saggur, the learned counsel for the petitioner has first of all urged, and which point also came to the mind of the Court and was duly discussed, that the cheques issued earlier to the holding of the actual polling would have repercussion on development after the polling, may be immediately, or may take time, therefore, the issuance of cheques as such as mentioned above could be deemed to have been issued and the benefit thereof could be deemed to have been extended to gain votes at the polling, would entitle the petitioner to lead evidence in the case instead of deciding it on preliminary issues. The learned counsel for the petitioner claimed that the repercussions of certain previous conduct of the respondent which may result into some benefit to the voters in future is also to be seen. So this point will also be taken up later on.

Firstly, coming to the questions raised by the learned counsel for the petitioner, it may be stated that before the election process commenced, a Model Code of Conduct was circulated and announced on 11-7-1999 and the parties contesting the election were bound by such instructions in the Code. According to the Model Code of Conduct announced the parties were to observe absolute discipline and not to misuse the State machinery in any way. However no copy of the Model Code of Conduct has been placed on record nor details of the same have been mentioned in any paragraph of the petition or annexed with it. He also urged that under Section 86 of the Act, an election petition is to be proceeded in view of the provisions of Order 6 Rule 16 of the Code of Civil Procedure and as far as possible the petition be read as a whole and not in piece-meal and much water has flown since the earlier pronouncement came and that the plaintiff could not be rejected under Order 7 Rule 11 of the Code of Civil Procedure on unimportant points which do not come into the way of a fair trial of the entire controversy. In support of his contention he cited the authority of the Apex Court in D. Ramachandran Vs. R. V. Janakiraman and others, 1999(3) S.C.C. 267, in which there was a question regarding expenditure in excess than permitted one and that the winning candidate did not disclose the expenses incurred and there were certain basic questions which allegedly violated the law and the rules and it was laid down by the Apex Court that there was distinction between "material facts" and "full particulars" and the portions of pleadings could not be struck down under Order 6 Rule 16 of the Code of Civil Procedure without appreciating the true terms.

The learned counsel for the petitioner also referred to another authority of the Apex Court in *H. D. Revanna Vs. G. Puttaswamy Gowda and others*, A.I.R. 1999 S.C. 768, to say that the election petition cannot be dismissed on the question of maintainability on the ground of non-disclosure of material facts when there are ample averments in the petition to constitute a cause of action. This case relates to the illegality committed at the time of recounting of votes. It is mentioned in this very pronouncement that though in the material facts are lacking in the petition no amendment can be allowed.

He further referred to a Division Bench authority of this Court in *Harbans Singh Jaisi, Ex-MLA, Bhatinda Vs. Union of India* through Secretary, Ministry, Ministry of Home Affairs, New Delhi and others, (1997-2) 116 P.L.R. 778 wherein it was held that "the Election Commission is entitled to take necessary steps for the conduct of a free and fair election even anterior to the date of issuance of notification". This case relates to certain formation of development schemes before the elections were actually held. In this case there were allegations that some grants were released a month prior to the holding of the election for uplift of the community and various ameliorative measures for the benefit of agriculturists, trade and industrial sector; for the welfare of women; for the welfare of people belonging to economically backward classes; war widows; pensioners; students; local and supplies sector and transport sector etc. were announced. This cited case only relates to the question whether the Chief Election Commissioner could impose certain conditions in the Code of Conduct announced before the election. So, according to the learned counsel, the petition contains sufficient facts and circumstances and was already full of material facts and, therefore, the plaint could not be rejected, returned or dismissed.

Shri S. P. Jain, learned senior counsel for the respondent has taken me through the relevant provisions of the Act and has made a scurrilous attack during the course of arguments and has urged that in fact the election petition does not contain the material facts required to be mentioned in any civil suit or in any election petition so that a case is made out, according to the contention of the petitioner himself, and those facts if disclosed would constitute some complete act alleged to have been committed by the respondent against whom the petition is filed so as to enable the petitioner himself to be legally permitted to lead evidence. If those material facts are not mentioned on what basis and on what ground a petitioner or plaintiff may have a right to lead the evidence; the events remain incomplete. According to him, the cause of action is a "bundle of facts" and it must construe some complete act or acts or events which are thought to have been committed by the respondent or the offence must be exposed with full particulars so that the petitioner himself can lead evidence to project those acts and series of acts and any respondent or defendant can defend the same with a definite assertion with which he is confronted with by way of evidence of the petitioner or plaintiff. He also urged that in fact all the alleged cheques were issued much prior to the respondent filing the nomination papers on 18-8-1999. The claim in the election petition is also that these cheques were also encashed prior to the period the respondent became a candidate for election and the material date was 18-8-1999 while the polling took place on 5-9-1999. The respondent was not a candidate prior to 18-8-1999 and although none of the alleged acts is done by the respondent but even if he had done anything he could not be made responsible under the Act. One may make up one's mind to be a candidate at the eleventh hour. A party may field any candidate it deems proper. So, according to him, none of the allegations mentioned in the petition are relevant for the purposes of the election petition and cannot be looked into and it was, therefore, also submitted that a sufficient cause of action only arises to the petitioner when the alleged acts are stated to have been committed after one becomes a candidate and not earlier to that.

So, it was further contended that the petitioner did not disclose as to which of the specific cheques were ante-dated, by whom, at which place, who were the persons who conspired and what was the object of

the issuance of a particular cheque. If the place where the cheques were ante-dated or prepared in back dated and the names of the persons in whose presence the cheques were ante-dated had been mentioned in the present petition, the respondent would have a right to cross examine the witnesses produced by the petitioner in order to controvert that situation and to put up their suggestion that no such event or act took place or that the cheques were ever ante-dated. It is like a sort of criminal proceedings that "A" is assaulted by "B" in presence of "C" and "D" at place "E" mentioning motive, injuries and nature of offence made out and an act or an occurrence like this took place. The person made an accused in such a case would have a right to controvert the same. Similarly in a civil suit in which a promissory note is allegedly executed by "A" in favour of "B" in presence of "C" and "D" or similar document is said to have been made ante-dated or forged, the other side has a right to controvert that it was either forged or ante-dated. So when there are no material facts mentioned neither the petitioner can have a right to lead the evidence nor the private respondent can have the chance in defence to know the case against him to enable him to defend himself. Similar is the situation regarding all other cheques mentioned in the table given in the petition, it is not mentioned as to when these cheques were issued, who were the persons and what transpired between the persons issuing the cheques and to whom the cheques were handed over and what conversation took place between them and what was the part the petitioner wanted to attribute to the respondent that he conspired with others i.e. with whom and probably when. Similarly, what assistance was taken and when from the government officers or other employees also does not find mention. How the persons sitting in a Municipal office were connected with the respondent when the respondent asked them to reach there and who brought the relevant material in the Municipal office for being used by the respondent? What help was solicited from Sarpanches and Panches is not specifically mentioned? Only names of large number of persons are mentioned in para 15 of the election petition that they were allured for voting but no material facts as to when, how and why. In this connection the learned counsel has referred to the authorities of the Apex Court in *Bhag Mal v. Ch. Parbhu Ram and others*, A.I.R. 1985 S.C. 150 and *Lakshmi Charan Sen and others vs. A. K. M. Hassan Uzzaman and others*, A.I.R. 1985 S.C. 1233. He referred to the observations of the Apex Court in para No. 21 of the judgement in *Lakshmi Charan Sen's* case that there is no force in the directions issued by the Election Commission and even the failure on the part of the Chief Electoral Officer to comply with these directions would not vitiate any election.

The learned counsel for the respondent further cited the authority in *Subhash Desai vs. Sharad J. Rao and others*, A.I.R. 1994 S.C. 2277, which is an important pronouncement as it mentions that if the petitioner omits to mention material facts and all circumstances in the petition, the same is liable to be dismissed. Another authority of the Apex Court in *Shri Satyanarain Dudhani v. Uday Kumar Singh and others*, A.I.R. 1993 S.C. 367 again emphasises that

the petitioner must plead the material facts and only then supported by contemporaneous evidence that the relief can be granted otherwise not. In another authority in *Azhar Hussain v. Rajiv Gandhi*, A.I.R. 1986 S.C. 1253, the Apex Court goes to the extent that "the contention that even if the election petition is liable to be dismissed ultimately, it should be so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable". The learned counsel for the respondent further referred to the case *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi*, AIR 1987 S.C. 1577 which refers to the charges of corrupt practices and misuse of the official machinery should be so specific and giving full picture thereof and the Apex Court very much felt concerned that the Parliament should also consider amendment of the law so that its time is not wasted in ever increasing such petitions and, therefore, it was observed that material facts must come in the petition. It was being claimed that late Shri Rajiv Gandhi used the influence of his mother, the then Prime Minister. The observations were that there must be some tangible disclosure in the petition.

Coming to another authority in *Vijhuran Thakur-das Jhamandas v. Sabir Shaikh*, A.I.R. 1996 Bombay 356 where the persons pleaded that the returned candidate came in a particular dress or propagated a particular religion or posed as Muslim, it was held that it was not going to have any effect. So, a speech in *Gurudwara* as claimed hardly discloses any violation. *Narain Chand Prashar vs. Prem Kumar Dhumal and others*, A.I.R. 1993 H.P. 84, also refers to the non-disclosure of the material facts and the objection of respondent No. 1 that the entire petition does not disclose any cause of action and as such is liable to be dismissed. The petitioner on the other hand contends that the petition is not liable to be dismissed at the threshold on the basis of the preliminary objections. The facts stated in various paragraphs of the election petition do constitute acts of corrupt practices and also disclose cause of action within the meaning of Section 100 of the Act.

In *Smt. Indira Nehru Gandhi v. Shri Raj Narain*, A.I.R. 1975 S.C. 2299, it was observed that there is nothing to indicate that the word "candidate" in clause (7) of Section 123 of the Act has been used merely to identify the person who has been or would be subsequently nominated as a candidate. A definition clause in a statute is legislative device with a view to avoid making different provisions of the statute to be cumbersome. Where a word is defined in the statute and that word is used in a provision to which that definition is applicable, the effect that wherever the word defined is used in that provision, the definition of the word gets substituted. Reading of word "candidate" in Section 123(7) of the Act in the sense in which it has been defined as a result of the amendment made by Act 40 of 1975, the only reasonable inference drawn is that the person referred to as a candidate in that clause should be a person who has been or claims to have been duly nominated as a candidate at an election and not one who is yet to be nominated.

He quoted another authority in *Mohan Rawale vs. Damodar Tatyaba alias Dadasaheb and others*, 1994(2) S.C.C. 392, wherein it was held as under :—

"All sub-sections of Section 123 of the Act refer to the acts of a 'candidate' or his election agent or any other person with the consent of the candidate or his election agent. The substituted definition of the expression 'candidate' in Section 79(b) completely excludes the acts by a candidate upto the date he is nominated as a candidate. Therefore, the allegations relating to the period anterior to the commencement of the candidature cannot be relied upon to establish corrupt practice *proprio vigore*. But on the question whether they are relevant and admissible for all purposes, no opinion need be expressed.

It was further held that a reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleadings are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the pleading, to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars."

So far as the allegations contained in paragraph 7 of the petition are concerned these relate to the release of certain grants. The grant was released when the respondent was still a Member Parliament and, therefore, it cannot be said that the said grant was released after the respondent ceased to be a Member of the Parliament. So this gives no cause of action to the petitioner.

As regards the allegations made in paragraph 8 of the petition, as already mentioned, the dates on which the cheques were signed, by whom and at what place and when they were ante dated have not been mentioned. A table showing number of cheques, amounts of cheques, purpose of issuance of cheques are mentioned but it is not mentioned that as to when the construction of various buildings was sanctioned by whom and whether the same have been constructed and completed or not. Similarly, as regards the other cheques alleged to have been issued for construction of Stadium, Bar room of Advocates, there is nothing when sanction for construction of these buildings was obtained and whether those buildings were actually constructed or

not. So unless the main allegations made in the form of material facts are mentioned, the respondent would not be able to controvert as to which construction work the evidence would relate to i.e. datewise and placewise and whether the work has been completed or not? The learned counsel for the respondent has vehemently urged that the construction of so many buildings would not be possible within a period of two months since the issuance of cheques relates upto July, 1999 and the payments are deposited in the Banks till August, 1999. So mere allegations cannot take the place of material facts supposed to be alleged in the petition. The learned counsel for the respondent has stated that if the dates of sanction and dates of actual construction had been given only then there would have been some material facts available on the file. Issuance of some cheques would not be enough. Similar is the position as regards the allegations made in paragraphs 11, 12, 13, 14 and 15 of the petition.

The details regarding the allurements to the Sarpanches and persons is mentioned in paragraph 15 of the petition. The allegations in paragraph 18 are about exploitation of religion in Gurdwara and allegations in paragraph 19 about the construction of Bar Room. It is not known whether the said bar room has been constructed or not and likewise the allegations that the respondent tried to claim that he was going to convert Gurdaspur to Washington and Pathankot to New Jersey do not constitute material facts and are mere allegations. Nor such slogans mean anything.

Therefore, regarding the first argument of the learned counsel for the petitioner that the issuance of the aforesaid grants and completion of the works would have repercussions on the voters in future also lack material facts because no date of completion of any of the aforesaid work is mentioned in the petition anywhere. So then this argument goes. So far as the argument of the learned counsel for the petitioner that the Code of Civil Procedure is applicable, it may be stated that the Representation of Peoples Act as well as the Code of Civil Procedure are complementary and supplementary and are not opposed to each other. It remains a fact from the observations in the various judicial pronouncements that the material facts are main fabric of the allegations which give a right to relief and constitute a cause of

action. Merely saying about the issuance of cheques for certain purpose without explaining the objects for which the cheques were issued have been achieved or not the petition would be devoid of material facts. The other details if had been furnished regarding the execution of those works would have been material facts and not material particulars. So the petition utterly lacks the disclosure of material facts to enable the petitioner to lead evidence or to the respondent to defend and the allegations made in the petition are not sufficient to make out a cause of action sufficient to deal with the matter and the entire alleged development work relates to the period before the respondent got the nomination as candidate and the model code is not referred in the petition any where to have actually interfered with or having been violated by the respondent to enable the petitioner to take advantage of the respondent's alleged conduct.

Sum and substance of the entire discussion comes to be that though the Courts are not absolute omniscient legalist but with the best of assessment it can be said in this case that the allegations made by the petitioner relate to the period prior to 18-8-1999 i.e. the date when the respondent filed nomination as a candidate and, therefore, cannot be looked into as per the authorities mentioned above. Secondly, the petitioner did not disclose the material facts. The election law contained in the Representation of Peoples Act, 1951 and the rules applicable here and there, are not to be taken as a legal quagmire but have to be read meticulously and with precision and to be strictly applied.

Hence in the absence of sufficient cause of action, no evidence can be led legally or effectively on issues No. 1 to 5 nor the respondent is expected to defend something which comes out in evidence for the first time without being controverted in the written statement; therefore, issues No. 6, 7 and 8 are decided in favour of the respondent. Issues No. 9 and 10 are formal in nature and nothing urged goes against the respondent. Election of the respondent is upheld.

As a result, the petition fails on preliminary points and is dismissed with costs of Rs. 10,000/-.

October 20, 2000.

Sd/-

A. S. GARG, Judge



**MEMO OF COSTS**

आदेश

Memo of costs incurred by the Respondent in the Court as taxed by the Court and payable by the petitioner.

Note:—Costs assessed by the court to be paid by the petitioner to the respondent.

By Appellant By Respondent.

Rs. P.

Rs. P.

Law Stamps	—	10,000.00
Process fees	—	—
Counsel's fees	—	—
Miscellaneous	—	—
Total	—	10,000.00

(Rupees Ten Thousand only)

Sd/-

Asstt. Registrar (Writs).

[No. 82/PB-HP/4/99]

By Order.

K. R. PRASAD, Secy.

सारणी

क्र.सं.	निर्वाचन क्षेत्र का विवरण	निर्वाचन क्षेत्र की क्रम संख्या और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम व पता	निरर्थता का कारण
1.	उत्तर प्रदेश राज्य से विधान सभा के लिए उप निर्वाचन, 2000	201—गौरीबाजार	राकेश सिंह, ग्रा. व पो. लबकनी, जिला देवरिया, उत्तर प्रदेश अनिरुद्ध, ग्रा. व पो. सिरजम, जिला देवरिया, उत्तर प्रदेश। अजय कुमार, ग्रा. व पो. देवगांव, जिला देवरिया, उत्तर प्रदेश। फेदार, ग्रा. केसलखारी, पो. बरपार, जिला देवरिया, उत्तर प्रदेश	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे। —वही— —वही—
2.	—वही—	—वही—		
3.	—वही—	—वही—		
4.	—वही—	—वही—		

[सं. 74/उ.प्र.-वि.न. / 2000 (उप)]

आदेश से,

एल. एच. फारूकी, सचिव

## ORDER

New Delhi: the 8th January, 2001

O.N. 15.—Whereas, the Election Commission is satisfied that each of the contesting candidates specified in column 4 of the table below at the Bye-election to the Legislative Assembly in the State of Uttar Pradesh as specified in column (2) held from the Constituency specified in column (3) against his name has failed to lodge the account of his election expenses as required by the Representation of the People Act, 1951 and the rules made thereunder as shown in column (5) of the said table;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notices of the Election Commission, after considering the representation made by them, if any the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the table below to be disqualified for being chosen as, and for being a member of either house of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order :—

TABLE

S. No.	Particular of Election	S. No. & Name of Constituency	Name & Address of Contesting Candidates	Reason of Disqualification
1.	Bye-election to the Legislative Assembly in the State of Uttar Pradesh, 2000	201-Gauri Bazar	Rakesh Singh, Vill & P.O. : Iavakani Distt. : Deoria, Uttar Pradesh.	Failure to lodge any account of election expenses.
2.	-do-	-do-	Anirudh, Vill. & Post : Sirjam Distt. : Deoria, Uttar Pradesh.	-do-
3.	-do-	-do-	Ajai Kumar, Vill. & P.O. : Deogaon, Distt. : Deoria, Uttar Pradesh.	-do-
4.	-do-	-do-	Kedar, Vill. : Keshobari, Post : Barpar Distt. : Deoria, Uttar Pradesh.	-do-

[No. 76/UP-LA/2000(Bye)]

By Order,

L.H. FARUQI, Secy.

आदेश

नई दिल्ली, 8 जनवरी, 2001

आ.प्र. 16.—यतः निर्वाचन आयोग का समाधान हो गया है कि उड़ीसा विधान सभा के साधारण निर्वाचन, 2000 के लिए जो नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र में हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में अथवा अपेक्षित रीति से दाखिल करने में असफल रहा है,

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिये कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या न्यायीचित्त नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के अन्वय (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कारावधि के लिए निर्वात घोषित करता है :—

## सारणी

क्र. सं.	निर्वाचन का विवरण	विधानसभा निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निराहता का कारण
1.	उड़ीसा विधान सभा के लिये साधारण निर्वाचन 2000	28—बागदेराबिसी	श्री अशोक कुमार, सामल, गाँव चन्दनपुर पो. रामचन्द्रपुर जिला जाजपुर उड़ीसा	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—वही—	—वही—	डा. देव राय मु. बोडटालूपाटना पो. मोहनपुर जिला जाजपुर उड़ीसा	—वही—
3.	—वही—	—वही—	श्री अश्वेंटा बिस्वाल मु. राम्पा पो. बारी जिला जाजपुर उड़ीसा	—वही—

[सं. 76/उड़ीसा-वि. स./2000]

आदेश से,

बी. एन. चावला, अवर सचिव

## ORDER

New Delhi, the 8th January, 2001

O.N. 16.—Whereas, the Election Commission is satisfied that each contesting candidate specified in column (4) of the Table below at the General Election to the Orissa Legislative Assembly held in 2000 from the Assembly Constituency as specified in column (3) against his/her name has failed to lodge an account of his/her election expenses or in the manner required by the law as shown in column (5) of the said Table as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, the concerned candidate has either not furnished any reason/explanation for the said failure even after due notice and the Election Commission, after considering the representation, if any made by him/her is satisfied that he/she has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the Representation of the People Act, 1951, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being

chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

S. No.	Particulars	S.No. and Name of Assembly	Name and Address of Candidate	Reason for Disqualification
1.	General Election to the Orissa Legislative Assembly, 2000.	28-Bari-Derabish	Sh. Ashok Kumar Samal Vill.—Chandanpur P.O.—Ramachandrapur Dist.—Jajpur Orissa.	Failed to lodge any account of election expenses.
2.	-do-	-do-	Dr. Deba Ray At—Boitalupatana P.O.—Mohanpur Dist.—Jajpur Orissa.	-do-
3.	-do-	-do-	Sh. Adwaita Biswal At—Rampa P.O.—Bari Dist.—Jajpur Orissa.	-do-

[No. 76/OR-LA/2000]

By Order,

B.N. CHAWLA, Secy.

नई दिल्ली, 10 जनवरी, 2001

New Delhi, the 10th January, 2001

आ.अ. 17.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13-क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग छत्तीसगढ़ सरकार के परामर्श से एन.डी.आर. श्री अजय सिंह, आई.ए.एस. (आर.आर. : 83) को उनके कार्यभार ग्रहण करने की तारीख से आगामी आदेशों तक के लिए छत्तीसगढ़ राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री अजय सिंह को मुख्य निर्वाचन अधिकारी, छत्तीसगढ़ के रूप में कार्य करते हुए, सचिव, ऊर्जा एवं जल संसाधन के उनके वर्तमान पद पर बने रहने की अनुमति दी जाती है। छत्तीसगढ़ राज्य में निर्वाचन की घोषणा के तुरन्त बाद वे उपरोक्त अतिरिक्त प्रभार को धारण करना समाप्त कर देंगे और तत्काल सौंप देंगे।

[सं. 154/छत्तीसगढ़/2000-का. प्रशासन]

आदेश से,

ललित मोहन, अवर सचिव

O.N. 17.—In exercise of the power conferred by Sub-section (1) of Section 13A of the Representation of the People Act, 1950 (43 of 1950) the Election Commission of India in consultation with Government of Chhattisgarh hereby nominates Shri Ajay Singh, IAS (RR : 83), as the Chief Electoral Officer for the State of Chhattisgarh with effect from the date he takes over charge and until further orders.

2. Shri Ajay Singh while working as Chief Electoral Officer, Chhattisgarh is allowed to retain his present charge of Secretary, Energy & Water Resources. He shall cease to hold and hand over forthwith the said additional charge immediately after the announcement of elections in the State of Chhattisgarh.

[No. 154/CGH/2000-P. Admn.]

By Order,

LALIT MOHAN, Under Secy.